

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	John F. Grady	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	03 CR 1032	DATE	December 8, 2004
CASE TITLE	United States v. Watzman		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

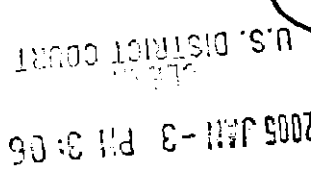
MOTION:

--

DOCKET ENTRY:

- (1) ☐ Filed motion of [use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due _____.
- (3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.
- (4) ☐ Ruling/Hearing on _____ set for _____ at _____.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) ☐ Trial[set for/re-set for] on _____ at _____.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] See attached order. Regarding the Johnson case, defendant may file a memorandum by December 29, 2004, and the government may reply by January 12, 2005. ENTER ORDER.

- (11) ☒ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.		number of notices	Document Number <div style="font-size: 2em; font-family: cursive;">91</div>
No notices required.		date docketed	
<input checked="" type="checkbox"/> Notices faxed by judge's staff.		docketing deputy initials	
Notified counsel by telephone.		date mailed notice	
Docketing to mail notices.		KAM	
Mail AO 450 form.		mailing deputy initials	
Copy to _____			
KAM	courtroom deputy's initials		
Date/time received in central Clerk's Office			

(Reserved for use by the Court)

December 8, 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

 Plaintiff,

v.

H. MARC WATZMAN,

 Defendant.

No. 03 CR 1032

DOCKETED
JAN 3 2005

ORDER

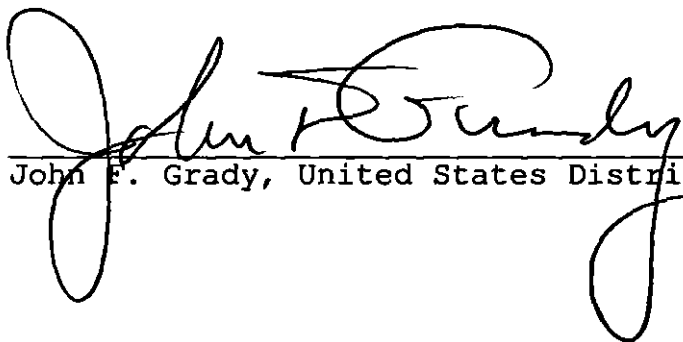
At the Daubert hearing of December 7, 2004, there was a colloquy between the court and counsel concerning the question of whether the defendant could be found guilty of an attempt to receive or possess child pornography even if the government is unable to prove that the still photos were photos of real children. Government counsel cited the case of United States v. Raney, 342 F.3d 551 (7th Cir. 2003), but our research indicates that the case counsel probably had in mind is United States v. Johnson, 376 F.3d 689, 693-94 (7th Cir. 2004). That case deals with the question of impossibility in terms of the defendant's intent; if he acts with the intent to commit the crime, and does not know that it is impossible (because the "minor" he is soliciting is actually an adult), that is sufficient to constitute an attempt. The Court's opinion does not discuss the fact of impossibility as it may relate to the other element of an attempt, "a substantial step toward the

91

commission of that crime," id. at 693. The Court of Appeals apparently regards this element as satisfied by an act done with the necessary intent. In any event, Johnson is the law of the Circuit, and it appears to support the government's contention that its proposed evidence in regard to the still photos would be sufficient to establish an attempt even without evidence that real children were used. If defendant disagrees, and believes that Johnson is distinguishable from this case, he may file a memorandum by December 29, 2004, and the government may reply by January 12, 2005.

DATED: December 8, 2004

ENTER:



John F. Grady, United States District Judge